HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION Nos.1167, 1297, 8535 & 8702 of 2002

Date: 28-06-2007.

Between :

M/s.Chaitanya Lime Industries, Vadlamudi,
rep. by its Proprietrix & another.

.....Petitioners

And

The Commercial Tax Officer, Tenali.

.....Respondent.

HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION Nos.1167, 1297, 8535 & 8702 of 2002

COMMON ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

These four writ petitions are being disposed of by this common order after hearing learned counsel for the parties. Counters have also been filed. The facts are not at dispute. With some variation in the dates, there is similarity of facts in all the cases. For facts, we will mention writ petition No.1167 of 2002.

The grievance of the petitioner is that she received a notice on 28.12.2001 informing that the revision had been decided on 04.08.2000. Almost similar are the facts of the other cases and in all cases the order passed in revision has been communicated through registered post after more than a year. Learned counsel for petitioner submits that since the revisional order had to be passed within four years and as a matter of fact, the respondent had not passed any order within four years, they pre-dated the order as 04.08.2000 whereas it was not passed on

04.08.2000. The learned Government Pleader submits that the order could not be communicated on the known address of the petitioner, but immediately after 04.08.2000, the order was pasted on the factory premises. This, obviously, is not correct because, we have seen from the record that both the addresses i.e. the residential address of the petitioner as well as the factory address were available all along with the Department and the notice which was served later-on by registered post in 2001, was sent on the address which was available to the Department all along, and at no point of time, the address had been changed by the petitioner as regards her office was concerned, which was Door No.11-6-18, Movva Vari Street, Pandurangapet, Tenali. All along, the petitioner was available at this address.

Rule 58 of the Andhra Pradesh General Sales Tax Rules, 1957 contemplates service by various modes. The priority of the modes is also mentioned in the Rule itself. The Rule lays down that the service on a dealer may be effected in any of the ways mentioned therein and after giving various modes, it states that if the dealer or his manager or agent is not found, service should be made by leaving it at his last known place of business or residence or by giving or tendering it to an adult member of his family or it has to be served on the address known to the assessing authority by sending the service through

a registered post and if it is returned unserved, it shall be put on notice board of the office of the assessing authority. And then, after that, if all possible modes which are mentioned in 58 (a), (b) and (c) fail, then it can be served by affixing it on some conspicuous place at his place of business or residence.

So, all the methods of service that have been mentioned in Rule 58 of the Rules have to be exhausted before recourse is taken to affixing of the notice. In the present case, we have seen the record also. Nowhere it is mentioned that any other mode other than affixing the notice prior to 2001, was adopted. As a matter of fact, notice was sent by registered post for the first time after more than a year and it was received by the petitioner. Therefore, the only presumption that can be drawn in the facts and circumstances of this case is that the order was not passed on 04.08.2000, but was passed somewhere in 2001 and pre-dated to make it within time. In this connection, we rely on a judgment of Supreme Court in **State of Andhra Pradesh v. M.Ramakishtaiah & Co.**[1].

The writ petitions are accordingly allowed and the orders in revision are set aside. No costs.

BILAL NAZKI, J

28th June 2007

S. ANANDA REDDY, J

ajr

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[1] 93 STC 406